

REPORT OF PRELIMINARY INVESTIGATION TO DETERMINE
PUBLIC INTEREST AND NECESSITY FOR A STATUTORY
ADJUDICATION OF AN UNNAMED STREAM
(KNOWN AS JOHNSON CREEK)
IN SHASTA COUNTY

An investigation has been made by the Board's staff as provided by Section 2525 of the California Water Code to determine if the facts and conditions are such that a statutory adjudication would serve the public interest and necessity.

Introduction

On July 13, 1982 a petition was received requesting the Board to conduct a statutory adjudication of the water rights of an unnamed stream system, locally known as Johnson Creek. The petition was signed by William L. and Georgene E. Riech, Douglas and Judith L. Bryant and Don and Mary Ann Robinson. The name of Eugene Eldrige was typed on the petition but was not signed. All of the parties state on the petition that they are claimants to the use of water from Johnson Creek. They also state that the public interest and necessity would be served by a statutory adjudication. A copy of the petition is attached. (Attachment A)

Scope of Investigation

The Board's staff visited the area before and after the petition was filed and met with attorneys representing the various parties. The intent of these meetings was to assist all parties in settling the controversies without the necessity of conducting a lengthy adjudication. In addition, a field investigation in-lieu of hearing was conducted by staff as a result of protests against Application 26015 which was filed by Paul R. and Marion J. Rideout, predecessors of Mr. and Mrs. Reich.

Johnson Creek Watershed

Johnson Creek, a tributary of Montgomery Creek, is located about one mile east of the town of Montgomery Creek. It drains a watershed of about one square mile. The elevation of the watershed ranges from about 2000 feet to about 3500 feet. Johnson Creek flows into Montgomery Creek which, in turn, flows into the Pit River. Vegetation consists of conifer and deciduous vegetation which grows on the gentle to moderate slopes of the watershed. Some small areas on the gentle slopes have been cleared and planted to various domestic crops.

The controversy is a product of the 1976-77 drought. At that time the flow in Johnson Creek fell to a very low stage. Mr. and Mrs. Rideout had constructed a home on a parcel of land, apparently riparian to Johnson Creek. A one inch plastic pipe had been placed in the creek a few hundred feet above the house. This system apparently provided an adequate supply of water for domestic purposes.

-2-

A dam had been installed in the creek upstream from the Rideout point of diversion by the extended family of John and Cathrine Caton, or their predecessors. The dam apparently was constructed prior to 1914 and is located on U.S. Government land. John R. Caton has been spokesman for the family. For the purposes of this report the family's interest will be referred to as Caton. The Caton ditch runs from the dam along the contour of the hill conveying water to several parcels of land which at one time made up the family ranch.

On the occasion that flow in Johnson Creek became very low, Mr. Caton completely dammed up the creek and diverted the complete flow into the ditch. When Mr. Rideout found that no water was flowing to his point of diversion, he extended the water line to a point above Caton's dam. Mr. Caton removed the Rideout water line. It was, in time, replaced by Mr. Rideout, and this began a dispute which reportedly led to threats of violence.

A representative of the Board visited with Mr. Rideout and advised him to file an application to appropriate the water and to describe the point of diversion above the Caton dam. Application 26015 was filed and was protested by Caton and others of the family who use water from the ditch.

William L. and Georgene E. Riech acquired the Rideout property and an adjoining parcel in 1982 and filed the petition for adjudication.

Staff has met with representatives of both parties several times for the purpose of conducting the field investigation proceedings in-lieu of hearing, for negotiating withdrawal of the protest, and for negotiating a division of the water along guidelines of reasonableness.

The attorneys of both parties have tried to get their clients together to discuss an agreement. Mr. and Mrs. Riech live at Lompoc, California where they are engaged in a business. Their attorney informs us that because of the press of business they have not have able to visit the property and meet with the other party or his attorney.

Analysis

Three water rights are involved in this dispute. Priorities appear to be as follows:

1. The Caton pre-1914 appropriative right with the point of diversion being located on vacant public domain.¹
2. Riech's apparent riparian right.
3. Riech's Application 26015.

¹/ An appropriation made on public lands was held to be superior to the riparian rights of lands contiguous to the same stream that passed to private ownership after the making of the appropriation.... (Hutchins p 57) We are, however, unaware of the relative dates of the appropriative rights claimed by Caton and the withdrawal of the Riech land from the public domain.

Application 26015 appears to have no value since the Reich parcels are apparently riparian, being contiguous to Johnson Creek. This application should be cancelled.

A letter dated April 2, 1985 and a schedule representing a suggested allocation of water among the parties are attached as Attachment B. These were furnished to both attorneys as a suggested basis of agreement between the parties. Apparently both sides would be satisfied with the amounts listed in the schedule with small modifications. Several telephone calls have been made to the petitioner's attorney and apparently the only problem is getting the parties to come to a final agreement. The petitioner's attorney has requested the Board's staff to delay action on the petition until the parties can reach a final agreement.

Recommendation

It is recommended that the petition be denied without prejudice. The dispute involves only two parties who are diverting water from the same creek. The Board's representatives have met with the parties on several occasions and have proposed an allocation of water that is generally acceptable to both parties; however, the parties have failed to meet in good faith to resolve their dispute.

A statutory adjudication requires a determination of the water rights of all water users within the watershed. It is not the proper vehicle to resolve a conflict between two parties involved in a dispute. The parties in this dispute have the option of filing the action in the Court for resolution. Either party may request the Court to refer specific issues to the Board under the court reference procedure.

A statutory adjudication would require substantial time and cost for the Board and all water users within the watershed. All of the water users within the watershed would be required to pay the Board's costs of conducting the adjudication and would incur additional costs to retain professional assistance or to attend Board meetings. The Board has a limited number of staff available to work on this project and other higher priority activities. Finally, a statutory adjudication may not result in an allocation of water to the disputing parties which would be significantly different than the proposed allocation previously developed by the Board.

In view of the limited nature of the dispute, unwillingness of the parties to meet and negotiate an agreement, the option of a court resolution of the issues and the relatively high costs of a statutory adjudication (in terms of time and resources), an adjudication of this watershed is not within the public interest and necessity.